

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	4:08CR3090
	)	
v.	)	
	)	
LEROY HENRY COOPER,	)	MEMORANDUM AND ORDER
	)	
Defendant.	)	
	)	

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Pending before me is the defendant's motion for bill of particulars. Filing [22](#). The indictment filed against the defendant alleges that between October 18, 1999 until May 26, 2008, the defendant knowingly and intentionally combined, conspired, and agreed with other persons to distribute and possess with the intent to distribute 50 or more grams of methamphetamine. The defendant claims he cannot adequately prepare for trial unless the government provides:

1. The dates and places of any and all crimes alleged to have been committed by defendant, Leroy Cooper, including all dates and places of criminal acts alleged in the indictment, and
2. The names of any unindicted co-conspirators the government plans to use as witnesses.

Filing [22](#).

The government argues that the motion for bill of particulars should be denied. Filing [27](#). Specifically, the government states:

In this case, the government provided discovery materials to the Defendant pursuant to Rule 16.1(a) on July 15, 2008. (Filing No. 13). Additional discovery material was sent to the Defendant on July 28, 2008. He was provided with police reports, including property

reports, lab reports, and photographs, which are relevant to the charged offenses. Because the Defendant has access to this material, and has had such access for approximately 60 days, the United States does not believe that it should be required to file a Bills of Particulars in this matter.

Filing [27](#), at CM/ECF p. 2. The defendant admits to receiving six investigative reports dating back to 1996, approximately a thousand pages of reports, and a copy of the defendant's criminal history record for convictions occurring in 2001 and 2005. Filing [23](#).

"A bill of particulars serves to inform the defendant of the nature of the charge against him with sufficient precision to enable him to prepare for trial, to avoid or minimize the danger of surprise at trial, and to enable him to plead his acquittal or conviction in bar of another prosecution for the same offense when the indictment is too vague and indefinite." [United States v. Hernandez, 299 F.3d 984, 989-90 \(8th Cir. 2002\)](#). When, as in this case, the information requested by bill of particulars is already available to the defendant through other documentary evidence in his possession, the defendant need not receive a bill of particulars to fully defend the case. [U.S. v. Brockman, 183 F.3d 891, 896 n. 3 \(8th Cir. 1999\)](#).

The defendant's motion also seeks a list of the witnesses the government will call to testify at trial. Although a district court may order the government to disclose its witness list for trial, "criminal defendants have no right in noncapital cases to require disclosure of the list of government witnesses under Fed.R.Crim.P. 16(a)." [U.S. v. White, 750 F.2d 726, 728 \(8th Cir. 1984\)](#). There is no constitutional right to discovery in a criminal case; though [Brady v. Maryland, 373 U.S. 83 \(1963\)](#)

requires the government to disclose evidence favorable to the defendant upon request, "[i]t does not follow from the prohibition against concealing evidence favorable to the accused that the prosecution must reveal before trial the names of all witnesses who will testify unfavorably." [Weatherford v. Bursey, 429 U.S. 545, 559 \(1977\)](#).

The defendant has failed to show any need for a bill of particulars. He possesses or has access to the information needed to prepare for trial or plead double jeopardy as a bar to further prosecution. His motion for bill of particulars will be denied.

IT THEREFORE HEREBY IS ORDERED: Defendant's motion for bill of particulars, filing 22, is denied.

DATED this 25th day of September, 2008.

BY THE COURT:

s/ *David L. Piester*

David L. Piester  
United States Magistrate Judge